NOTIFICATION.

No. L.S. 3350–L.W. 192-51-2, dated Bangalore, 28th November 1951.

Whereas under Section 33-A of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), a complaint was made by Sri Siddalingappa, C.Wvg. J. 89 and others, Bangalore, to the Industrial Tribunal, Bangalore, that the Management of the Bangalore Woollen, Cotton and Silk Mills Company, Ltd., Bangalore, has, during the pendency of proceedings before the said Tribunal, contravened the provisions of Section 33 of the said Act;

And whereas the award of the said Tribunal in respect of the said complaint has been received;

Now, therefore, in exercise of the powers conferred by Section 17 of the said Act, His Highness the Maharaja of Mysore hereby directs that the said award, noted below, be published in the *Mysore Gazette*.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

GOVERNMENT OF MYSORE.

READ—

The following papers:

BEFORE THE INDUSTRIAL TRIBUNAL, BANGALORE.

Monday, the 5th day of November 1951.

PRESENT:

Rajadharmaprasakta Mr. A. R. Nagesvara Iyer, B.A., B.L., *Chairman.*

Rajadharmaprasakta Mr. T. Singaravelu Mudaliar, B.A., B.L., *Member.*

A. C. No. 3 of 1950-51. *Complaint No. III of 1951-52.*

Siddalingappa, C.Wvg., J. 89 and others ... *Complainants.*

Versus

Bangalore Woollen, Cotton and Silk Mills Company, Limited, Bangalore. ... *Respondent.*

Counsel for the Complainants ... Sri G. V. Ramachar (Advocate)

Counsel for the Respondent ... Sri E. S. Venkataramanan (Advocate).

Award.

This is a complaint under Section 33(A) of the Industrial Disputes Act filed on 21st June 1951, complaining that the Respondent had changed a previous practice during the pendency of an Industrial dispute before this Tribunal without obtaining its permission under Section 33 of the Industrial Disputes Act. It is alleged in the petition as follows :—

> "The previous practice related to the procedure adopted by the respondent in terminating the services of the workmen on account of habitual absence. The practice was that the respondent used to give a warning which was termed as "Final", indicating to the workmen concerned that any repetition of absenteeism would entail a discharge from service as contemplated in 9(a)(12) and 9(b)1 of the Standing Orders.
>
> Although the Standing Order empowered the Management to dismiss the workmen, by constant practice, there was an implied understanding between the workmen and the Management that in cases of habitual absence, the rule that was being followed was a final warning for a discharge and not for a dismissal in case of a repetition of absenteeism. The respondent was giving effect to a discharge and not dismissal.
>
> The respondent, during the pendency of the dispute before this Tribunal, has modified the procedure, which was actually governing the workmen in the cases above mentioned, without any express permission from the Tribunal, as contemplated under Section 33 of the Industrial Disputes Act."

It is also alleged—

> "The petitioners submit that this modification of the procedure, without the permission of the Tribunal affects them asmuchas they are deprived of a month's dearness allowance and also wages in lieu of notice. Besides, this modification has the effect of depriving the workmen of the contribution amount made by the Company with regard to their Provident Fund."

In the statement filed by the Management, while denying the main allegations in the complaint, it is stated that "The respondents deny that there was any practice under which workmen guilty of habitual absence could not be dismissed, but could only be discharged by being given one month's notice or one month's wages in lieu of notice." It is also maintained that for habitual absence under the Standing Orders, a workman was liable to be dismissed without notice, that only recently they were not enforcing the said Standing Orders strictly, but were giving a lighter punishment by discharging workmen, who were guilty of habitual absence, with one month's wages, that the respondents found that such non-enforcement encouraged indiscipline and frequent absences among workmen, and this, being a matter of discretion, cannot amount to a practice or change in the conditions of service and that the complaint was not maintainable under Section 33(A) of the Act.

Learned Counsel for the workmen filed some documents and no oral evidence was adduced by either side. Elaborate arguments were addressed by Learned Counsel for the workmen, and his main contention was that Section 33 must be taken to have been contravened by the Management on the following grounds :—

1. Notices were being issued to workmen administering a final warning with a threat of discharge for habitual absence. That procedure has now been given up.

2. That for habitual absence, permission was sought for dismissal of the workmen concerned and not for discharge according to the prevalent practice and that this was illegal; and

3. That the workmen concerned were kept out of work or excluded from work pending disposal of the applications above mentioned and that this was also illegal.

Learned Counsel invited our attention to the Standing Orders relating to absence of workmen without leave and they are the following:—

Standing Order 5(i) refers to a workman remaining absent in excess of the leave period granted and it provides that unless he has previously obtained the written permission for the extension of his leave period or explain to the satisfaction of the Manager the reason for his absence, he would be considered to be absent from duty under Standing Order 5(ii) or Standing Order 5(iii) and be dealt with accordingly. Standing Order 5(ii) provides 'that an employee who shall absent himself for eight consecutive working days in any one month without such leave or without having sent a satisfactory explanation may be dismissed without notice.'

Our attention was also invited to Standing Order 9(a)(6) which refers to absence without leave for eight working days in any one month, unless it is afterwards proved that such absence was unavoidable, and to Standing Order 9(a)(12) which refers to habitual absence. Such absence under Standing Order 9(a)(6) and 9(a)(12) amounts to misconduct for which a workman is liable to be dismissed without notice. Standing Order 9(b), however, provides that for absence without leave without sufficient cause "employees may be fined or suspended without pay or reduced, but the offence if repeated or in any gross case, may be treated as misconduct under Standing Order 9(a)" and it also says "Fines or suspension or reduction may be imposed for the following offence or at the discretion of the Manager for acts of misconduct specified in sub-section (a) of this rule as an alternative to dismissal." In effect, according to Standing Order 9(b) the Manager in his discretion may, for the offences of misconduct under sub-clause (a), instead of inflicting the more severe punishment of summary dismissal without notice, inflict a lighter punishment, *i.e.*, fine, or suspension or reduction, but not discharge. Standing Order 8(ii) may also be mentioned in this connection. That says "The Manager, on behalf of the Company, shall give one month's previous notice to any permanent employee whose service he may think fit to dispense with or in default of such notice shall pay to such employee one month's wages in lieu of notice."

Learned Counsel for the workmen relied on the following documents in support of his contentions—Exhibits 1 to 9 in which final warnings were administered under threat of discharge for a repetition of the offence; Exhibits 10 to 25, in which final warnings were given under threat of dismissal; and Exhibit 26 in which for habitual absence a workman was given a notice of discharge with a month's wages under Standing Orders 9(a)(12) and 9(b)(1). Other Exhibits such as Exhibit XXVIII were also referred to.

Learned Counsel also says that according to the Standing Orders a charge-sheet had to be given to the workmen before taking any action for misconduct such as habitual absence, that that practice was not followed in connection with the eight applications that had been filed prior to this complaint and that there by the conditions of terms of service had been altered contravening Section 33 sub-clause (a) of the Act. It was also argued that even apart from the Standing Orders the practice was to serve a charge-sheet and that by violating that practice, the provisions of Section 33(a) had been similarly contravened. Learned Counsel was not able to refer to any such standing order on the subject and for this purpose Exhibit 42 was relied upon. That was a letter written in 1949 to the Labour Association suggesting

the incorporation of some standing orders in accordance with the suggestions made by the Labour Commissioner, and inviting views of the Labour Association on those matters. There is nothing to show that the Labour Association agreed to the alterations suggested or that the standing orders as proposed were actually adopted, as contended for on behalf of the workmen. The circumstance that Exhibit 42 was addressed to the Labour Association is no proof that Standing Orders were framed as suggested therein. In proof of the practice relied upon by learned Counsel the earliest document to which he was able to refer was the charge-sheet given to a workman as late as the 8th of June 1951 and he argues that from the circumstance that on and from that date the Management presented charge-sheets to workmen, a presumption arises that the old practice was revived and that, as no such charge-sheet had been served on the workmen involved in the eight petitions filed prior to this complaint (Serial Numbers 18, 29, 30, 48, 49, 65, 66 and 88 of 51-52), the Management had acted in contravention of Section 33, clause (a).

There is no provision in the Standing Orders for serving a charge-sheet on the erring workmen. No doubt in some cases charge-sheets were served on the defaulting workmen and they were given an opportunity to explain their conduct. It has been explained that that course was adopted in very serious cases and was not the usual practice adopted by the Management. Exhibit 58 in the main case was strongly relied upon by Mr. Ramachar in this connection. That was a charge-sheet presented to a workman on 24th April 1949 and a perusal of the document shows that that contains serious accusations of insubordination which had been repeated. Exhibit 31 relates to a case of a workman, who interfered with the administration of the department inciting others to indulge in wilful disobedience of a lawful order of a superior, and even after due warnings the workman resorted to insolence of officers. In one or two other cases charge-sheets were served on some workmen but they are of very recent dates—one of the 8th of June and the other 15th of June 1951. It was also argued that since charge-sheets are being now served on the workmen it must be inferred that the practice which had been given up was resumed. This seems to be far-fetched. On the whole there are no grounds for holding that the practice of serving charge-sheets on erring workmen in every case existed and that it had now been discontinued. This contention must therefore be rejected.

The main contention for the workmen however is that for habitual absence, warnings should be administered including a final warning and that absence from work after such warning would entail a discharge with one month's notice or with payment of one month's wage in lieu of notice. It is urged that subsequent to the reference of the disputes to this Tribunal, the Management were seeking to dismiss workmen ignoring the practice that is said to have been prevalent until recently and thereby the conditions of service applicable to the workmen immediately before the commencement of the proceedings had been altered to their prejudice and that thereby the Management had contravened Section 33, Clause (a) of the Industrial Disputes Act. In support of this contention, the evidence of Mr. Perkin, the then Manager of the Mills was mainly relied upon. He has, no doubt, stated that for habitual absence final warnings were being administered and for repetition of the offence workmen used to be discharged. That is supported by some exhibits filed on behalf of workmen. But in some cases, for example, Serial Numbers 59, 136, 149, 164, 186, 187 and 216 of 1950-51, permission was sought for the dismissal of the workmen for habitual absence and such permission was granted by this Tribunal. The various sections to which reference has been made are clear that the question of punishment is a matter within the discretion of the Manager. If in lieu of a more severe punishment by way of dismissal, a workman was either fined or suspended or discharged, that cannot be taken to be a practice modifying the Standing Orders on

the subject. That cannot also be taken to establish a practice having the effect of altering the Standing Orders, as the nature of the punishment to be meted out is left to the discretion of the Manager. It has been explained that the leniency shown to the workmen resulted in indiscipline leading to inefficient work and that in the interests of discipline it was found necessary to seek permission for dismissal of workmen found guilty of misconduct. According to Standing Orders punishment which could be inflicted by the Manager in respect of various offences has been laid down and the standing orders are binding on both sides. It is within the competency of the Manager to use his discretion and mete out the punishment which each case might deserve. The contention that conditions of service have thereby been altered and that Section 33, Clause (a), has been infringed by the Manager must fall to the ground.

It was contended that Section 92 of the Evidence Act was a bar to the production of evidence to contradict the standing orders, while for the workmen, Section 12 of the Standing Orders Act was relied upon for the position that it was only oral evidence that is so excluded and not documentary evidence and Section 12 being a special provision relating to the standing orders between the employers and the employees, that governs the case and not Section 92 of the Evidence Act. It was also argued that since these workmen have not yet been dismissed it could not be contended that Section 33 had been infringed and therefore the application is premature. Since we are of opinion that Section 33, Clause (a), has not been infringed, it is unnecessary to consider these questions.

In the result our award is that the case put forward by the workmen in their petition has not been established.

A. R. NAGESHVARA IYER,
Chairman.

T. SINGARAVELU MUDALIAR,
Member.